

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1444 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
-

PANCHSHEEL GLASS TRADING CO

Versus

N RASIKLAL & CO

Appearance:

MR DF AMIN for Petitioner

MR PV NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 18/02/2000

ORAL JUDGEMENT

1. Appellant (original defendant) challenges legality and validity of judgment and decree dated August 31, 1979, passed by learned Principal Judge, City Civil Court, Ahmedabad, in Civil Suit No.3263 of 1975, by which the appellant was directed to pay to the respondent a sum of Rs.9,268.53 ps with running interest at the rate 6% per annum from the date of decree till realisation.
2. The brief facts of the case are as under:
Respondent-original plaintiff is a partnership firm doing wholesale business in glass. The appellant was also doing the same business. The respondent placed an order with the appellant on July 13, 1973 for supply of 30 boxes of wired glass of Window glass at a price of Rs.22/- per sq.mtr. The appellant had agreed to supply the same and advance payment of Rs.2000/- was made by the respondent to the appellant and a writing to that effect

was made on the same date. Delivery of goods was to be given within 4-6 weeks. As per the say of the respondent, the appellant gave delivery of only 10 boxes on November 3, 1973 and, for the same, an amount of Rs.4,768.83 was paid by the respondent to the appellant. The respondent, thereafter, called upon the appellant to supply the remaining boxes often, but the appellant did not give reply and, therefore, the respondent issued letters dated February 14, 1974 and March 6, 1974 calling upon the appellant to give delivery of the goods. As per the say of the respondent, the price of glass had gone high upto Rs.40/- per sq.mtr. The appellant did not give delivery of the remaining boxes and, therefore, on account of breach of agreement by the appellant, the respondent had suffered a loss of Rs.18/- per sq.mtr. The respondent, therefore, filed the suit, being Civil Suit No.3263 of 1975, in the City Civil Court, at Ahmedabad, for recovering damages of Rs.8,037.36 ps along with interest and notice charges.

3. The suit was resisted by the appellant by filing written statement at Exh.13, inter alia, contending that the respondent had to make payment of full price of 30 boxes at the time of arrival of wagon for releasing the receipt, and when the wagon arrived, the respondent was facing financial difficulty and was not in a position to release all the 30 boxes and, therefore, he had only taken delivery of 10 boxes even though the appellant was willing to deliver all the 30 boxes. It was further averred by the appellant that the respondent had given assurance that he will take delivery of remaining 20 boxes within two days and, relying on his assurance, the appellant gave delivery of 10 boxes only. It was further averred that the respondent did not take delivery of the goods and, therefore, as per the agreement, the appellant was entitled to forfeit the amount of advance payment of Rs.2000/-. It was further averred that the appellant was ready to give delivery of all 30 boxes when the wagon was arrived at, but, since the respondent did not make full payment, delivery of all the goods was not made.

4. On the aforesaid rival pleadings of the parties, issues were raised by the trial court at Exh.31. In support of its case, the respondent examined its partner, Bharat Khemchand Shah at Exh.32, the accountant of the respondent-firm, Shashikant Chimanlal at Exh.48, partners of the respondent-firm, Nareshchandra V.Shah, at Exh.49, and Vikrambhai Yashvantbhai, Exh.51. On behalf of the appellant, partner of the appellant-firm Harishchandra Keshavlal Shah, was examined at Exh.55. The parties to the suit also produced documentary evidence, reference to

which shall be made as and when necessary during course of this judgment.

5. Learned Judge, on appreciation of oral as well as documentary evidence produced by the parties, and after hearing the arguments advanced by the learned counsel for the respective parties, concluded that the respondent had proved that the appellant had committed breach of the suit contract by not supplying remaining 20 boxes of glass within reasonable time. It was further concluded that, as a result of non-supply of remaining 20 boxes, the respondent had suffered loss because of rise in price of the goods, i.e. glass, and had suffered damage to the tune of Rs.8037.36 ps. Learned Judge further concluded that the appellant had failed to prove that he had offered to deliver all the 30 boxes at the time when delivery of 10 boxes was given to the respondent, and, further held that the appellant had not proved that as the respondent had committed breach of contract by failing to take delivery of the goods, the appellant was entitled to forfeit the deposit amount. On the basis of abovereferred to conclusions, learned Judge passed decree of Rs.9268.53 ps with running interest at the rate 6% per annum from the date of decree till realisation, to be realised from the respondent, which has given rise to filing of the present First appeal.

6. Learned counsel for the appellant has taken me through the entire record and proceedings of the court below, and has vehemently submitted that the respondent was responsible for not taking delivery of 20 boxes from the wagon and the respondent had committed breach of contract. Learned counsel for the appellant further submitted that the respondent had committed breach of contract by not taking delivery of remaining 20 boxes of glass and, therefore, the appellant was entitled to forfeit advance amount of Rs.2000/-. Learned counsel for the appellant further submitted that the trial court had not properly taken into consideration the evidence produced by the appellant and had erred in passing decree of Rs.9,268.53 ps. against the appellant.

7. Learned counsel for the respondent has vehemently submitted that the appellant had committed breach of contract by not delivering 30 boxes of glass as per the agreement arrived at between the parties and had committed breach of contract. Learned counsel for the respondent further submitted that, as price of glass had increased from Rs.22/- per sq.mtr to Rs.40/- per sq.mtr. at the relevant time, the respondent had suffered loss

because of default on the part of the appellant and, therefore, the respondent was entitled to claim damages, as there was breach of contract committed by the appellant. Learned counsel for the respondent further submitted that the trial court had correctly appreciated oral as well as documentary evidence and, therefore, the appeal be dismissed.

8. Contention of learned counsel for the appellant that the respondent because of financial difficulties had not taken delivery of remaining 20 boxes of glass and had committed breach of contract, deserves to be rejected. On behalf of the respondent, partner, Bharat Khemchand Shah, at Exh.32, in paragraph 8 of his deposition, categorically deposed that the respondent-firm was having hypothecation account with the Central Bank of India and the Bank had sanctioned drawing power of the respondent-firm upto Rs.50,000/-. In support of the above say, letter of Central Bank of India was produced at Mark 16/5. Thus, from the evidence of partner of respondent-firm, it becomes clear that the financial condition of the respondent was sound and there was no reason not to take delivery of remaining 20 boxes on account of financial condition of the respondent as contended by the appellant. On the contrary, learned trial judge has observed in paragraph 9 of the judgment that the appellant's averment that the respondent had given promise to take delivery of remaining 20 boxes within two days, appeared to be incorrect, as, in fact, on the same day, i.e. November 3, 1973, the appellant had disposed of remaining three boxes by giving delivery to other merchants among whom there were purchasers outside Ahmedabad City. Version of the appellant that, because of the financial condition of not having full amount with the respondent he had not taken delivery of the remaining 20 boxes, is rightly rejected by learned trial Judge. The finding recorded by the trial court that the respondent had proved that because of non-delivery of remaining 20 boxes of glass, as price of glass had gone up by Rs.18/- per sq.mtr., the respondent had suffered loss of Rs.8037.36 ps., is eminently just and proper and does not call for interference in this appeal. The conclusion and findings arrived at by the trial court are borne out from the evidence produced by the parties on record. I do not find any reason to interfere with the findings recorded by the learned Trial Judge.

11. As a result of foregoing discussion, this First Appeal fails and is hereby dismissed.

(swamy)